IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

Satya Narayan Swami Vs. The Judge,Labour Court,Jodhpur
(S.B.C.Writ Petition No.5043/04)

Dated:- 17th August, 2006

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr.Sanjay Mathur, for the petitioner.
Mr.P.K.Lohra, for the respondent.

In the instant writ petition, the petitioner has challenged the Award dated 26.8.2003 and the order dated 15.9.2004 both passed by the learned Labour Court, Jodhpur. A reference was made by the appropriate government to the Industrial Tribunal on 5.1.2001 as to whether action of the management of the respondent-Bank in terminating services of Shri Satya Narain Swami and Shri Shyam Sunder is legal and justified. If not, then what relief the workman concerned are entitled to. The petitioner filed the statement of claim before the Tribunal and the management filed its reply thereto. On 19.5.03 the claim was fixed for filing of affidavits of the workman. However, since an adjournment was sought on behalf of the petitioner, the case was posted for 10.7.2003. Again on 10.7.2003, the case was adjourned to 26.8.2003 at the request of the petitioner . On 26.8.2003 the petitioner workman did not file affidavits. Neither the workman nor his representative appeared before the Court on that day. In these circumstances, the learned Tribunal

concluded that the workman was not interested in prosecuting the matter and therefore it passed “no dispute award”. Feeling aggrieved thereby, the petitioner filed an application on 19th April, 2004 with the request that the award dated 26.8.2003 may be recalled and the matter be restored for decision on merits. In the application, it was stated that the advocate of the petitioner-workman did not inform him about the filing of the affidavits nor did he himself appear and in these circumstances the matter remained unattended and finally “no dispute award” was passed. The application u/s 5 of the Limitation Act seeking condonation of delay in filing the aforesaid application was also filed with the said application. In the reply to the application for restoration, it was stated by the management that the Award has been published u/s 17 of the Industrial Disputes Act, 1947 (for short “the Act of 1947”) therefore the Tribunal has now become functus officio and did not have any authority to review and recall the same. It was reiterated that the petitioner-workman was not willing to contest the matter and therefore he he did not appear on various dates and under these circumstances the Tribunal was justified in passing the “award of no dispute”. The Tribunal by its order dated 15th September,2004 dismissed the application by a detailed order. Hence, this writ petition.

In response to the notice of this writ petition, the respondents in their reply have stated that total period for which the workman was employed with the management was only for 79 days and the workman has resorted to remedy of raising dispute with regard to his termination after lapse of 14 years . In-ordinate delay was over-looked by the

appropriate government in making reference to the Industrial Tribunal. Number of opportunities were granted to the workman to produce his evidence by way of affidavit and when he failed to do so, the Tribunal was justified in passing of the award. It was also submitted that as far as merits of the case are concerned, petitioner having worked only for 79 days , the provisions of Section 25-F of the Act of 1947 would not be attracted in the present case. As regards Section 25-G of the Act of 1947 is concerned, it was submitted that in spite of notification published by the management in newspapers inviting applications of the candidates who had worked with them for 79 days, the petitioner did not offer his candidature for re-employment and did not appear before the interview board. Having not availed the opportunity for his selection, no indulgence can be granted to the petitioner even on the strength of Section 25-H of the Act of 1947.

In the ordinary course this Court would have considered it appropriate to remand the matter to the Industrial Tribunal for decision on merits. However when merits of this case are examined to form a prima facie view of the matter, whether or not, it is a case worth remand on merits, it transpires that the petitioner had worked for a period of 79 days with the respondent Bank way back in the year 1982. On his making representation, appropriate government referred the matter to the Industrial Tribunal as delayed as 5.1.2001. Having himself delayed in filing the affidavit , the petitioner was not vigilant in conducting the matter before the Tribunal. Period of 79 days could hardly attract Section 25-F and G of the Act of 1947 on the question which in the present case has

arisen . Section 25-H also prima facie cannot be taken to have been violated because in spite of opportunity given by the respondent -bank, the petitioner failed to avail of the same and did not appear before the interview board in response to the notification issued in various newspapers in that behalf. Even otherwise, the petitioner failed to give any satisfactory explanation for his not appearing before the learned Labour Court because even if what he has stated is taken to be true that his lawyer did not inform him about the necessity of filing affidavit, then also he did not contact his lawyer for a period of eight months after the date of passing of the award.

In the circumstances, I do not find it a fit case for remand to the Labour Court. The present writ petition is dismissed being devoid of any merit.

(MOHAMMAD RAFIQ),J.